IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE FIRSTENERGY CORP. SECURITIES LITIGATION, This document relates to: ALL ACTIONS.	Case No. 2:20-cv-03785-ALM-KAJ Chief Judge Algenon L. Marbley Magistrate Judge Kimberly A. Jolson

JOINT STATUS REPORT REGARDING TIME FOR RULE 30(B)(6) DEPOSITIONS

Lead Plaintiff, defendants Charles E. Jones and Michael J. Dowling, and defendant FirstEnergy Corp., by and through their respective counsel of record, set forth their respective positions regarding the time allowed for Lead Plaintiff to conduct a deposition of FirstEnergy's corporate representative pursuant to Lead Plaintiff's cross-notice of Defendant Jones and Dowling's deposition notice to FirstEnergy pursuant to Fed. R. Civ. P. 30(b)(6).

Lead Plaintiff's position. The parties' April 20, 2022 joint report concerned two separately noticed Rule 30(b)(6) depositions – one that Lead Plaintiff had noticed weeks earlier for April 27, and another that Defendants Jones and Dowling had noticed without a date. ECF 259. Lead Plaintiff's lone topic was FirstEnergy's deferred prosecution agreement ("DPA"). The Jones-Dowling notice spanned 14 substantive topics: 7 expressly concern the DPA (ECF 259-5 at 3-5 (topics 2, 5, 7-8, 11-13)); and 7 others do not refer to the DPA and either do not concern it at all or plainly extend well beyond it. *Id*. (topics 1, 3-4, 6, 9-10, 14). FirstEnergy opposed "affording each noticing party the 7-hour maximum contemplated by Rule 30," but the Court ordered these separate "depositions" (plural) to occur on May 19 and 20, 2022, with Lead Plaintiff and Jones-Dowling ***each*** "conduct[ing] a one-day deposition, not to exceed seven hours." ECF 261 at 1-2.

Lead Plaintiff subsequently cross-noticed the Jones-Dowling deposition for the non-DPA topics. FirstEnergy asserted that the Court's order precluded any time for this cross-noticed deposition, even though Lead Plaintiff had not cross-noticed it and the parties had not conferred about the non-DPA topics prior to the Court's Order. Lead Plaintiff, a "noticing party" for the Jones-Dowling deposition, needs 3.5 hours for its examination, which must extend to all defendants about whom the witness may have relevant testimony (*e.g.*, the deposition expressly concerns a half-dozen individuals ***other than*** Jones and Dowling), in addition to countering the Jones-Dowling examination. Accordingly, Lead Plaintiff submits there is good cause to afford it 3.5 hours of examination for its cross-noticed Jones-Dowling deposition. *See, e.g.*, *Burket v. Hyman Lippitt, P.C.*, 2007 WL 2421514, at *3 (E.D. Mich. Aug. 23, 2007) (extensive involvement in alleged securities fraud scheme constituted good cause for 15 hours for one deposition and 20 hours for another); *see also* Fed. R. Civ. P. 30(d)(1) ("The court must allow additional time consistent with Rule 26(b)(1) and (2) if needed to fairly examine the deponent . . . .").

Jones/Dowling's position. Defendants Jones and Dowling's position is that the 14 hours already set aside by this Court for the 30(b)(6) deposition of FirstEnergy are sufficient to address all of the topics identified in Lead Plaintiff's 30(b)(6) Deposition Notice and those identified in the Jones/Dowling 30(b)(6) Deposition Notice. If Lead Plaintiff desires to re-cross the FirstEnergy 30(b)(6) witness after Defendants Jones and Dowling have completed their questioning, Lead Plaintiff is welcome to reserve some of its allotted 7 hours to do so.

FirstEnergy Corp.'s position. This Court ruled that Plaintiff will have 7 hours and Defendants Jones and Dowling will also share 7 hours to conduct the 30(b)(6) deposition for FirstEnergy. ECF No. 261 at PageID 6059-60. While Plaintiff had not yet formally served its cross-notice at the time of the Court's April 21 order, the Court had already been made aware of

Plaintiff's intent to seek an additional 7 hours when it ruled that Plaintiff had 7 hours total. There is no reason to depart from that ruling.[1] In fact, the Rules presume one deposition per witness, Fed. R. Civ. P. 30(a)(2)(A)(ii), and counsel for other parties are permitted to question the witness during that one 7-hour deposition "regardless of which party noticed the deposition." *Longino v. City of Cincinnati*, 2013 WL 831738, at *5 (S.D. Ohio Mar. 6, 2013).

There is no reason to depart from the presumption of the Rules or the Court's previous order. First, the topics in Plaintiff's notice and the Jones/Dowling notice overlap. Plaintiff argues that 7 topics in the Jones/Dowling notice do not concern the DPA, but that is incorrect. For example, the fourth topic, which Plaintiff points to as an example, concerns testimony relating to Generation Now, Inc. and Partners for Progress, Inc. Payments to Generation Now and Partners for Progress are featured prominently in the DPA's statement of facts. *See* ECF No. 259-5 at PageID # 6013-43, *e.g.,* PageID #6014-15. The same is true for other topics.

Finally, Plaintiff could have included any of the topics noticed by Jones and Dowling in its own original 30(b)(6) notice. It should not get additional time because it failed to do so.

For these reasons, Plaintiff should not be given more 7 hours to conduct its deposition of FirstEnergy's 30(b)(6) representative, including for the topics it noticed and the topics in Jones/Dowling's notice.

[1] FirstEnergy also notes that Plaintiff did not revise its request for 7 hours (to the 3.5 hours now sought), either during the parties' April 29 meet and confer or before contacting this Court.

Dated: May 3, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 3, 2022, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will notify all counsel of record.

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One of the Attorneys for Defendants FirstEnergy Corp., Steven E. Strah, K. Jon Taylor, Jason J. Lisowski, George M. Smart, Paul T. Addison, Michael J. Anderson, Steven J. Demetriou, Julia L. Johnson, Donald T. Misheff, Thomas N. Mitchell, James F. O'Neil III, Christopher D. Pappas, Sandra Pianalto, Luis A. Reyes, Jerry Sue Thornton, and Leslie M. Turner